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# Directive 00-3: Sales Tax Treatment of Rentals of Portable Toilets

### Introduction

This Directive clarifies the application of the Massachusetts sales tax under G.L. c. 64H to rentals of portable toilets.

### Facts

In a typical transaction, a customer enters into a rental agreement with a portable toilet service company or other lessor for the use of one or more individual portable toilet units to be placed on construction sites, at wedding receptions, concerts, or other events where traditional bathroom facilities are unavailable or inadequate.

As part of the contractual agreement, the lessor cleans, maintains, and removes waste from units on a periodic basis for the duration of the contract. Services generally include setting up the units, cleaning and emptying them, replacing paper supplies, disposing of the waste removed, and removing the units at the termination of the contract. The customer is generally charged a flat fee for both the rental and servicing of the unit.

### Issue

Are charges for the rental of portable toilet units under a rental and service agreement subject to Massachusetts sales tax?

### Directive

The transactions at issue in this directive are mixed transactions that involve both a transfer of tangible personal property and services connected with that transfer. Whether such a transaction is a sale or lease of tangible personal property subject to tax, or a nontaxable service depends on the facts and circumstances.

The entire transaction will be subject to tax where:

- (1) a transfer of tangible personal property, the toilet unit, occurs;
- (2) charges for rental of the unit and performance of the service are not separately stated on the customer invoice; and
- (3) the fair rental charge for rental of the unit is not inconsequential as defined in 830 CMR 64H.1.1. A charge is not inconsequential if it exceeds ten percent of the total charge.

If the value of the tangible personal property is less than ten percent of the total charge, the entire transaction above will be exempt from sales tax. In such a case, the service enterprise must pay a sales or use tax at the time it purchases the unit from a supplier.

If charges for the rental of the portable toilet units are separately stated from charges for servicing them, it does not matter whether the cost of the units is consequential or inconsequential in relation to the total cost. Sales tax is imposed only on the separately stated rental charges. Lessors of

portable toilet units are required to collect and remit sales tax in accordance with the rules explained in Massachusetts Regulation 830 CMR 62C.16.2: Sales and Use Tax Returns and Payments.

Discussion of Law

A. General –

Massachusetts law imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts by any vendor, unless otherwise exempt. G.L. c. 64H, § 2. A retail sale is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business, excluding personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made. G.L. c. 64H, § 1. The definition of "sale" specifically includes any transfer of title or possession, or both, exchange, barter, lease, *rental*, conditional or otherwise, of tangible personal property. *Id.* (emphasis added).

The sales tax is calculated based on the sales price of the tangible personal property. "Sales price" is defined as the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise. G.L. c. 64H, § 1. In determining the sales price, any amount paid for any services that are a part of the sale is included. *Id.*

B. Retail Sale or Personal Service Transaction –

The rental of portable toilet units under a rental and service agreement involves both the transfer of tangible personal property, the portable toilet unit itself, and a service, the cleaning and maintenance of the unit.<sup>(1)</sup> Whether a particular transaction involving the transfer of tangible personal property is a personal service transaction is a question of fact. If charges for rental and service are not separately stated, the entire transaction will be exempt from sales tax if charges for the rental of the portable toilet unit are "inconsequential." See G.L. C. 64H, § 1. Under the provisions of 830 CMR 64H.1.1(1) the term "inconsequential" means having a value of less than ten percent of the total charge. If the charge for the portable toilet unit exceeds ten percent of the total charge, it is "not inconsequential" within the meaning of 830 CMR 64H.1.1(1), and the sales tax applies to the entire transaction. *Id.* If the charges for the rental of the toilet units are separately stated on the bill, only those charges are subject to the sales tax as a lease of tangible personal property under G.L. C. 64H, § 1, regardless of whether those charges are consequential or inconsequential within the meaning of the regulation.

C. Use of Resale Certificates –

If the lessor collects sales tax from its customers for the rental of the portable toilet either because they are separately stated on the bill, or they are a consequential element of a combined bill, then the lessor may present resale certificates to vendors when purchasing portable toilet units. The portable toilet units are being "resold" when rented to customers and are therefore not subject to sales tax when purchased. See G.L. C. 64H, § 1. However, if the lessor is not collecting sales tax on the rental of the units, then the units are not being resold, and the lessor must pay Massachusetts sales or use tax when purchasing the portable toilet units from vendors.

In addition, the lessor is responsible for paying sales tax when purchasing all paper products and other supplies used in the delivery of the service component of the transaction. The lessor is the consumer of these items.

Bernard F. Crowley, Jr.  
Senior Deputy Commissioner of Revenue

March 24, 2000

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Footnotes:

<sup>1</sup> Because the two transactions are readily separable, it is not necessary to determine whether the basic purpose of the transaction is the rental of the portable toilet unit or the services provided. "The predicate for application of this 'basic purpose' test is that the services and the property be inseparable because of the integrated nature of the transaction." *Information Services, Inc. v. Commissioner of Revenue*, 48 Mass. App. Ct. 197, 198 (1999). See also *New England Telephone and Telegraph Co. v. Clark*, 624 A.2d 298, 301 (1993); *Rylander v. San Antonio SMSA*, 2000 Tex. App. Lexis 68 (2000). ([return to text](#))